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A LETTER

TO

SIR J. T. B. DUCKWORTH, BART.,

President of the Devon & Exeter Hospital, &c., &c.

ON

THE EXCLUSION, BY STATUTE,

OF

PRACTISING MEDICAL MEN, BEING
DONORS & SUBSCRIBERS,

FROM THE

COMMITTEE OF THE DEVON AND EXETER HOSPITAL.

BY

T. SHAPTER, M.D.

PHYSICIAN TO THE DEVON AND EXETER HOSPITAL.

EXETER:

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TO SIR JOHN THOMAS BULLER DUCKWORTH, BART.,
President of the Devon and Exeter Hospital.

Sir,

I venture to entreat your attention to the following statement, in the hope that, through your influence and interposition, it may receive the liberal and favourable consideration of the Governors of the Institution over which you preside.

On the revision of the Statutes of the Devon and Exeter Hospital, in 1849, a new element was introduced, viz. : the direct exclusion, by Statute, of the whole of that class of persons which comprises the "Practising Physician, Surgeon, and Apothecary,"¹ from a seat at "the Committee," to which is delegated "the management of the affairs of the Hospital,"²

When this enactment was made, though fully appreciating both its injustice and general impolicy, yet, as I considered there was some personal wrong done by it towards myself, I forbore to offer any remonstrance on the subject ; nor should I now, probably, have advanced this, had not the existence of such a law amongst the Statutes of the Devon and Exeter Hospital been recently adduced, at a Court of Go-

¹ Statute xii., p. 5.

² Statute viii., p. 4.

vernors of another and neighbouring institution,³ as an argument and inducement for excluding, also by Statute, those gentlemen (contributing to its funds,) who may be members of the medical profession, from a seat at its Weekly Committee.

Here are notable circumstances; the Governors of an Hospital, which is a chief sphere of the usefulness and more generous impulses of the medical profession, single out, solely and specially, the members of that profession for an injurious exclusion, and the fact of their having done so is adduced as an argument for pursuing a similar course elsewhere.

The case to which I desire to call your attention is this: Previously to the revision of the Laws of the Hospital in 1849, the seventh statute⁴ declared who should be members of the Committee, viz.: the donors and subscribers to the funds of the Hospital of certain specified amounts and upwards, together with eighteen governors, to be selected from those whose contributions did not amount to the sum so specified. The sixteenth Statute enacted, "That no acting Physician, Surgeon, or Apothecary, who practises surgery, in the Hospital or out of it, be capable of being elected into the Committee, or of acting as a member of it, in any matters which relate to the admission or discharge of patients."

At the recent revision of the Laws, while the constitution of the Weekly Committee was con-

³ The St. Thomas' Hospital, near Exeter, for Lunatics.

⁴ Statutes and Constitutions, 1845. Statute vii., p. 4.

tinued the same as before, a very material alteration was made in the Statute⁵ affecting gentlemen in practice as medical practitioners, to this effect, "That no practising Physician, Surgeon, or Apothecary, shall be a member of the Committee, unless he be an Honorary Governor."

The practical bearing of the above Laws upon the question, to which your attention is now invited, is this: by the sixteenth statute of the Hospital, as it stood previously to the revision of the laws in 1849, (which in this respect was only a transcript of the statute as it stood through former years, from the foundation of the Hospital,) any practising physician, or member of the medical profession, practising surgery, though not eligible to be "elected" a member of the Committee, and though not capable of taking part in that portion of the business relating to the admission and discharge of patients, might, if an adequate contributor to the funds of the Hospital, take his place at the Committee in common with all other governors who may have acquired that right by virtue of their contributions.

But the revised Statute of 1849 entirely deprives him of this right, however largely he may have contributed to the funds of the Hospital, either by donation or subscription, or both, if he still be a practising physician, surgeon, or apothecary.

It will be observed that the Statute, by which practising medical men are excluded from the Committee, carries with it an exception, "unless

⁵ Statutes and Rules, 1849. Statute xii., p. 5.

he be an honorary governor." The effect of this exception is to admit to a seat at the Committee those gentlemen who, after having been attached to the Hospital as physicians or surgeons for twenty years and upwards, and having resigned their offices, have been elected respectively consulting physicians and surgeons.⁶ These consulting physicians and surgeons may then be appointed "honorary governors," when they "have the footing of a five-guinea subscriber." This was a gracious, and, as I believe, very useful enactment on the part of the Governors. But the doing that which is gracious to one set of persons does not obliterate an injury pressing upon another set. The cases are, in fact, entirely different; in the one there is a boon conferred, in the other there is a right denied.

Whilst alluding to the appointment of these, as it were, *ex officio* medical members of the Committee, I should wish distinctly to state that I am not in any way introducing or arguing the question of the medical officers having an *ex officio* seat in the Committee; that is entirely another question. The question now submitted for your consideration is simply and solely this; Why are gentlemen practising the medical profession, though contributing, equally with their neighbours, to the funds of the Hospital, excluded from the rights and privileges of subscribers?

The published list of contributors makes no classification of the professions, trades, or occupa-

⁶ Statutes and Rules, 1849. Statute xxvii., p. 7.

tions of the donors and subscribers ; nor does the Treasurer, when he receives a contribution, proceed to examine the donor on this point. The Statutes alone do this, and that solely for the purpose of excluding from the Committee practising medical men.⁷

Thus, by Statute, to denounce a whole class of persons as unfit to take part in the direction of the affairs of an institution, although they may be equally qualified with others by the amount of their contributions to do so, is not only an injustice but an indignity, and as such is a proceeding of a harsh kind on the part of one set of governors towards another. It is not too much to say, that before so signal a stigma be fixed upon a liberal profession, some sufficient grounds should, in one way or other, be adduced, and the reasons, or, it may be, the excuse, for its adoption, duly set forth.

The rights acquired by subscriptions or donations are primarily equal, and any disqualifications, whether they be general, moral, or professional, should be openly and candidly stated ; so that they may

⁷ In reference to this matter, a friend has written to me the following pertinent remark : " I have always entertained a very strong opinion upon the subject ; that so long as the institution consents to receive subscriptions and donations from the medical profession, whether medical officers or otherwise, they are entitled to all the privileges of other governors. Hospitals are supported by all professions and callings, prompted by feelings of benevolence and charity common to all. To disqualify or to limit the privileges of any individual, on account of his vocation, is simply unjust."

be understood and appreciated, as well by the disqualified as by those who disqualify.

In the particular instance which it is now my business to set forth, this should have been more especially the case, as there was the experience of the hundred years that had elapsed since the establishment of the Hospital to which to refer. I believe, however, I shall be correct in saying that this experience offers no one single example whereon to ground such a proceeding.

On the part of the Governors, it may be stated, that this Statute was passed, at a General Court, amidst numerous other alterations and amendments then submitted to them, and without their attention being drawn to its special effect.

This, I believe, to have been generally, and, so far as my own enquiries go, entirely the case. The Governors to whom I have pointed out this change in the Statute have, with one exception, invariably expressed surprise, as well as regret, at its having been made.

Indeed, so little was the particular bearing of this alteration appreciated, that, for nearly two years after it had become law, the Secretary himself was not aware of the alteration. On his attention being directed to it, he assumed that I, who had been, previously to the alteration, a member of the Committee, was, as a practising physician, subject to its application ; and, on this assumption, he discontinued to transmit to me, as had been his wont, the notices of the special meetings of the Committee.

Whence, then, did the change arise? The statutes were reconsidered, revised, and set before the General Court by a Special Committee. It may therefore be assumed, that this Committee entertained some sufficient reasons for the alteration; and that, as these, judging from the Statute as they found it, had not prospectively presented themselves, they were grounded on recent and positive experience. Yet such can scarcely be the case, for we find that this same Special Committee, which recommended this alteration, carrying the exclusion of the profession generally from a seat at the Committee, did at the very same time kindly and liberally propose, as before stated, that those medical men who may be made honorary governors should be *ex officio* members of the Board. Here, as regards the medical profession, there was advised a general exclusion from, with a special admission to, the Committee of Management.

It is with this general exclusion that I have now to deal, and with that only. In soliciting attention to this question, my object is neither to argue, nor in any way to set forth that gentlemen practising the medical art are very proper persons to enjoy, as well as their neighbours, an eligibility to sit as members of a Committee of Management in the affairs of an Hospital. It is for those who have enacted a Statute whereby the contrary is asserted to state the grounds for their exclusion. The proposition and the *onus probandi* clearly lie with them. Nevertheless,

the question may be asked, whether there might not be times when, in the management of the affairs of an Hospital, the counsel and advice of medical members of the Committee should have a special usefulness; and, if there be not something remarkable in the fact of an Hospital, an institution devoted to medical matters, excluding from the direction of its affairs those whose profession it is to attend to such matters, and who, as such, must be competent to deal with them. Test this by analogy, and see what comment is offered by the practice of institutions connected with other professions. Those connected with the Church or legal affairs certainly do not enunciate the principle of excluding from their management the members of their several professions. It would, in fact, strike one as sufficiently absurd if a prominent statute of a legal institution were to be, that practising lawyers should be excluded from all regulation of its affairs, or if that of a Church institution should declare officiating Clergymen to be incompetent to sit upon its Committees; and yet this course has been pursued in the case of a medical institution, as against medical men.

Though it is not the object of this letter to urge the question of the advantage accruing to the general affairs of an Hospital by medical men being associated with others in their direction; yet, before concluding, I venture to mention that the Committee of the Devon and Exeter Hospital has derived very great benefit from the occasional

presence of the medical men, who, not being in practice, or being honorary governors, have been allowed to assist in its counsels. The practice of the other hospitals throughout the country, also testifies to the utility of having medical men members of their Boards of Management ; for not only do they, for the most part, place medical men on their Committees, but in two other instances only, besides that of the Devon and Exeter Hospital, do they direct the exclusion which it is the purpose of this letter to expose.⁸

To look for a moment to the question as a matter of policy on behalf of the institution itself. By thus enacting a law whereby medical men are deprived of the privileges common to their neighbours, do not the Governors deny themselves the opportunity of occasionally associating with their Committee those who may be useful to it ? And do they not, moreover, hazard the risk of detaching, from feeling an interest in their Institution, a whole class of persons whose professional tendencies lead them to entertain it ?

That this latter consequence may result there can be no doubt ; for it so happens that an instance in illustration not very long since presented itself. A medical man intimated to the Secretary his intention of leaving with him a donation of a liberal amount, but on his being told that he was, as a medical man, by a recent alteration of the statute, excluded from the privileges enjoyed by other donors, contributing the same amount,

⁸ *Vide* Appendix No. 1.

the donation was withheld ; and I have been informed of another instance where this principle of exclusion has deprived the institution of a similar benefit.

The Hospital is now rich, and the Governors may probably deem it independent of the few casual donations and subscriptions which may accrue from "practising" medical men ; but a time may come when, as has been the case, its income shall prove unequal to its requirements ; and then, doubtless, contributions, such even as they might give, would have their value.

I venture here to say a few words on my own position. In 1840, the funds of the Hospital had fallen into extreme difficulties. My contribution towards their relief was, with that of my neighbours, willingly offered. Some nine years afterwards this statute excluding medical men from the Committee was passed. I then assumed, as I conclude the Secretary still assumes, this enactment to be retrospective in its operation, and that I was personally affected thereby. Supposing this to be the case, allow me to express my conviction that it happened accidentally, and with no intention of doing me the injustice of depriving me of the rights that I had acquired. I am, however, now instructed⁹ that it is not competent to the Governors to abridge these rights ; they were, in fact, a life interest attached to a donation. Be this as it may, my wish is to merge the personal in the general question, and ask from the Governors

⁹ *Vide* Appendix No. 2.

a liberal and patient consideration of the matter, in the hope that they will erase from amongst their Statutes a law, which every medical man must feel to be an injustice and a stigma on those practising the medical art, and which has this further disadvantage, that, looking at the antiquity and importance of the Devon and Exeter Hospital, it invites its repetition elsewhere.

I have the honour to be,

Sir,

Your obedient Servant,

T. SHAPTER.

Exeter, 13th April, 1857.

APPENDIX No. I.

Replies to Queries, by which are shewn the rule and practice of the Principal Metropolitan and Provincial Hospitals, in reference to admitting Practising Medical Men to serve upon the Committee of Management.

<i>Date of Establishment.</i>	<i>No. of Beds.</i>	<i>Title of Hospital.</i>	<i>Are the Medical Officers, ex officio, Members of the Committee?</i>	<i>Are the Medical Officers eligible to serve on the Committee, if Elected, or are they Members by virtue of Donation?</i>	<i>Are Practising Medical men, not professionally connected with the Hospital, being adequate Donors, Members of the Committee, or eligible to be Elected?</i>	<i>Are the Medical Officers excluded from the Committee?</i>	<i>Are Medical men, not being Medical Officers, excluded from the Committee.</i>
1102	650	St. Bartholomew	No	No	Yes	Yes	Not excluded
1552	520	St. Thomas'	No	No	Yes	Yes	Not excluded
	580	Guy's	No	Yes	Yes	No	Not excluded
		Westminster	Yes	Yes	Yes	No	Not excluded
	350	St. George	No	No	Yes	Yes	Not excluded
	400	London	No	No	Yes	Yes	Not excluded
	310	Middlesex	No	No	Yes	Yes	Not excluded
		University	No	Yes	Yes	No	Not excluded
		Charing Cross	No	No	Yes	Yes	Not excluded
		King's College	No	Yes	Yes	No	Not excluded
	150	St. Mary's	No	Yes	Yes	No	Not excluded
		City of London, for Diseases of the Chest	Yes	Yes	Yes	No	Not excluded
1803	96	Bedford General Infirmary	Yes	Yes	Yes	No	Not excluded
1839	89	Royal Berkshire Hospital	No	No	Yes	Yes	Not excluded
1740	106	Addenbroke, Cambridge	Yes	Yes	Yes	Yes	Not excluded
1755	100	Chester General Infirmary	Yes	Yes	Yes	No	Not excluded
1799	47	Royal Cornwall Infirmary	Yes	Yes	Yes	No	Not excluded
1841	52	Cumberland Infirmary	Yes	Yes	Yes	No	Not excluded

- (1) *St. Bartholomew's Hospital*.—Medical men being governors serve on the General Committee; but if elected officers of the institution, they cease to be members of this Committee. But they may belong to the Medical Council, which is composed of the senior medical officers, and to which "all matters relating to the medical department of the establishment, and to the medical school," are referred.
- (2) *St. Thomas' Hospital*.—The "past" medical officers, though they hold honorary offices, are, if they be governors, eligible to serve on the Committee.
- (3) *Guy's Hospital*.—The general affairs are managed by governors, who are appointed for personal merits, and not in virtue of donations; hence the Board is composed of the most eminent men in the State. There is no law to exclude medical men from amongst them. The affairs of the medical department and of the school are managed by a Medical Council, composed of the chief medical officers.
- (4) *Westminster Hospital*.—The Committee consists of the president, vice-president, treasurer, and thirty-six governors, of whom ten may be medical men, and five shall be medical officers. The other medical officers may serve upon the Committee, but do not vote.
- (5) *St. George's Hospital*.—The only governors ineligible to sit on the Committee are the resident officers and pupils, unless these latter have a medical degree, or are qualified to practice.
- (6) *London Hospital*.—The Charter of Incorporation excludes from the Committee all officers.
- (7) *The Middlesex Hospital*.—Besides the weekly Board, consisting of president, fifteen vice-presidents, two treasurers, and twenty-four lay governors, there is a Medical Committee, consisting of the two treasurers, three physicians, one assistant physician, one physician accoucheur, three surgeons, one assistant surgeon, and six other medical men, which makes rules and regulations respecting all persons, matters, and things, connected with the medical department; and it examines and approves all candidates for any medical or surgical appointment in the Hospital, before they can be admitted as candidates by the weekly Board.
- (8) *University College Hospital*.—Besides the Hospital Committee, there is a Medical Committee, consisting of the members of the faculty of medicine of the College, and of the medical officers of the Hospital, which has control over the medical and surgical departments of the Hospital, the officers and servants, students and patients. It makes regulations for the management of those departments, as well as rules for the admission and discharge of patients, &c.
- (9) *St. Mary's Hospital*.—There is a Medical Committee, composed of the medical officers and an equal number of life governors, being medical men, but not connected with the Hospital. The duties and powers are much those of the Middlesex and University College Hospitals.
- (10) *City of London Hospital for Diseases of the Chest*.—The medical officers serve on the Committee of Management in rotation. All may attend the meetings, and take part in the discussion, but the one only whose turn it is to serve has the right of voting.
- (11) *Bedford General Infirmary*.—The monthly Board is open to all governors, and the physicians and governors are *ex officio* governors.
- (12) *The Addenbroke, Cambridge*.—No Committee of Management. The government remains in the governors, and the medical officers are *ex officio* governors.

Replies to Queries, continued.

<i>Date of Establishment.</i>	<i>No. of Beds.</i>	<i>Title of Hospital.</i>	<i>Are the Medical Officers, ex officio, Members of the Committee?</i>	<i>Are the Medical Officers eligible to serve on the Committee, if Elected, or are they Members by virtue of Donation?</i>	<i>Are Practising Medical Men, not professionally connected with the Hospital, being adequate Donors, Members of the Committee, or eligible to be Elected?</i>	<i>Are the Medical Officers excluded from the Committee?</i>	<i>Are Medical men, not being Medical Officers, excluded from the Committee?</i>
1810	160	Derby General Infirmary (13)	Yes	No	Yes	..	Not excluded
1742	201	Devon and Exeter Hospital ..	No	No	No	..	Excluded
1841	45	Dorset County Hospital ..	No	Yes	Yes	..	Not excluded
1850	48	Durham County Hospital ..	Yes	Yes	Yes	..	Not excluded
1820	94	Essex and Colchester Hospital ..	No	Yes	Yes	..	Not excluded
1735	242	Bristol Royal Infirmary (14)	Yes	No	Yes	..	Not excluded
1736	120	Hants County Hospital ..	No	No	No	..	Excluded
1838	70	Royal South Hants ..	Yes	Yes	Yes	..	Not excluded
1776	69	Hereford General Infirmary ..	Yes	Yes	Yes	..	Not excluded
1833	35	Hertford General Infirmary ..	Yes	Yes	Yes	..	Not excluded
1853	26	Huntingdon County Hospital ..	Yes	Yes	Yes	..	Not excluded
1793	120	Kent and Canterbury Hospital ..	No	Yes	Yes	..	Not excluded
1745	226	Liverpool Royal Infirmary (15)	Yes	Yes	Yes	..	Not excluded
1834	120	Liverpool Northern Hospital ..	No	Yes	Yes	..	Not excluded
1771	115	Launceston Infirmary (16)	Yes	Yes	Yes	..	Not excluded
1769	67	Lincoln County Hospital (17)	Yes	Yes	Yes	..	Not excluded
1771	144	Norfolk and Norwich Hospital ..	No	Yes	Yes	..	Not excluded
1743	114	Northampton County Infirmary ..	Yes	Yes	Yes	..	Not excluded
1751	250	Newcastle-on-Tyne Infirmary ..	No	Yes	Yes	..	Not excluded
1782	122	Nottingham General Hospital ..	No	Yes	Yes	..	Not excluded
1770	156	Radcliffe Infirmary ..	Yes	Yes	Yes	..	Not excluded
1745	140	Salop Infirmary (18)	No	No	No	..	Excluded
1739	127	Bath General Hospital (19)	No	Yes	Yes	..	Not excluded

1826	112	Bath United Hospital	(20)	No	Yes	..	Yes	..	Not excluded
1809	100	Taunton and Somerset	..	No	Yes	..	Yes	..	Not excluded
1766	120	Stafford General Infirmary	(21)	No	Yes	..	Yes	..	Not excluded
1825	60	Suffolk General Hospital	(22)	Yes	Yes	..	Yes	..	Not excluded
	84	Chichester General Infirmary	..	No	Yes	..	Yes	..	Not excluded
1799	221	Birmingham Gen. Hospital	(23)	Yes	Yes	..	Yes	..	Not excluded
1841	130	Birmingham Queen's Hospital	(24)	Yes	Yes	..	Yes	..	Not excluded
1767	116	Salisbury General Infirmary	..	No	Yes	..	Yes	..	Not excluded
1745	100	Worcester Infirmary	..	Yes	Yes	..	Yes	..	Not excluded
1783	125	Hull General Infirmary	..	Yes	Yes	..	Yes	..	Not excluded
1740	100	York County Hospital	..	No	Yes	..	Yes	..	Not excluded

- (13) *The Derby General Infirmary*.—The medical officers of the week are *ex officio* members of the weekly Board.
- (14) *Bristol Royal Infirmary*.—By annual rotation, one physician and one surgeon are *ex officio* members of the Committee.
- (15) *Liverpool Royal Infirmary*.—One physician and one surgeon, the physician of the Lunatic Asylum, and one of the medical officers of the Lock Hospital, are *ex officio* members of the Committee. A Medical Board also sits weekly.
- (16) *Leicester Infirmary*.—The Committee is open to all the governors, and the medical officers are *ex officio* governors.
- (17) *Lincoln County Hospital*.—The physicians and surgeons, during the month succeeding their respective months of office, are *ex officio* members of the weekly Board.
- (18) *Salop Infirmary*.—There is a Medical Board, which meets quarterly.
- (19) *Bath General Hospital*.—The senior physician and surgeon are generally elected on the Committee.
- (20) *Bath United Hospital*.—A medical officer can be elected a director, and then becomes *ex officio* a member of the Committee.
- (21) *Stafford General Infirmary*.—All the medical officers are eligible, *ex officio*, for election on the Committee; but the practice is to appoint one physician and one surgeon for the year.
- (22) *Suffolk General Hospital*.—One physician and one surgeon are, *ex officio*, each week members of the Committee.
- (23) *Birmingham General Hospital*.—The senior physician and the senior surgeon are *ex officio* members of the Committee.
- (24) *Birmingham Queen's Hospital*.—The senior physician and the senior surgeon are *ex officio* members of the Committee, and the others are invited to attend.
- Obs.* From the above, it appears that the general practice is not to exclude medical practitioners from the management of the affairs of an Hospital, but rather to invite their co-operation. In the Metropolitan Hospitals, medical men are usually found serving on the Committee; and in some it is by law provided that a few, not officially connected with these Hospitals, shall be associated with the medical officers to form the Medical Council. In a large proportion of the Provincial Hospitals, the medical officers are *ex officio* members of the Committee.

APPENDIX No. II.

Opinion of Counsel on the Operation of the Statutes of 1849.

By virtue of the seventh and sixteenth of the Rules of the Devon and Exeter Hospital, published and in force prior to 1849, Dr. Shapter (who had become a benefactor on the faith of them,) was a member of the General Committee, and entitled to act as such in all matters not relating to the admission or discharge of patients.

The Rules revised and corrected in 1849 have in no way altered the position or rights of Dr. Shapter.

The twelfth of those revised and corrected Rules, excluding practising physicians from the Committee, has no effect to divest the previously acquired and vested rights of those already on the Committee.

It was not the intention of these New Rules to interfere with vested and acquired rights. They do not profess to annul the Old Rules and what has been done under them; but simply lay down the Rules for the future.

If so plain a matter required confirmation, I might refer to the twenty-seventh rule, which, in dealing with a new subject matter, is declared *to be retrospective*, thus plainly indicating that no other rule was to have any *retrospective* or *ex post facto* operation.

If it were the intention of the framers of the New Rules to interfere with vested and acquired rights, they have not declared it.

Even when the Imperial Parliament by statute repeals an existing statute, rights, vested and acquired under the repealed statute, remain unaffected; (8 Bing. 315; 14 Q. B. 839;

1 H. Black, 65 ; 1 Myl. & Cr. 555 ; 6 Ad. & El. 950.) But here there is not even the form of annulling the Old Rules. They are merely in effect superseded by the New Rules in future matters, and are left in force as to all bygone and concluded matters and vested rights ; (3 De Gex, Mac. & G. ; 20 Beav. 269.)

And if it had been the intention of the framers of the New Rules to interfere with vested rights, and such intention had been formally declared, it would not have been competent to the Governors to have effected that intention.

It is obvious that no body of persons could be permitted to acquire subscriptions of money, by the promise of rights and privileges to the subscribers, and then, by a rule of their own making, to exclude the subscriber from the exercise of his purchased rights and privileges.

It seems that for a considerable time the Governors, or the Committee and the Secretary, put a correct construction on the Rules ; and after the revision of the Rules in 1849 continued to summon Dr. Shapter to the Committees, but that they have discontinued that course.

I recommend Dr. Shapter to call upon the Governors and Committee, to have him regularly summoned to the meetings of the Committee, and on the Secretary to summon him ; to warn them that the proceedings of the Committee, without his being summoned, are irregular ; and, if his rights be not respected, to enforce them.

(Signed,)

J. SHAPTER.

Lincoln's Inn, 9th March, 1857.

